

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

RAQUEL HERRERA ISIDORO,, individually and on behalf of others similarly situated,

Plaintiff,

- against -

LA FONDA RESTAURANT AND TAPAS BAR INC.
(D/B/A LA FONDA BORICUA), DENISSE AYALA GARCIA (A.K.A.DENISE AYALA) , and JORGE AYALA ,

Defendant.

Case No.: 18-CV-05066-RWS

ANSWER AND AFFIRMATIVE DEFENSES

Defendant LA FONDA RESTAURANT AND TAPAS BAR INC. (D/B/A LA FONDA BORICUA), DENISSE AYALA GARCIA (A.K.A. DENISE AYALA) , and JORGE AYALA (hereinafter, “Defendant”), by its attorneys, Hang & Associates, PLLC, for its answer to Plaintiff RAQUEL HERRERA ISIDORO’s Complaint, states as follows:

DEFENDANT’S ANSWER TO THE COMPLAINT

1. Defendant denies the allegations set forth in Paragraph 1 of the Complaint.
2. Defendant admits the allegations set forth in Paragraph 2 of the Complaint.
3. Defendant denies the allegations set forth in Paragraph 3 of the Complaint.
4. Defendant denies the allegations set forth in Paragraph 4 of the Complaint.
5. Defendant denies the allegations set forth in Paragraph 5 of the Complaint.
6. Defendant denies the allegations set forth in Paragraph 6 of the Complaint.
7. Defendant denies the allegations set forth in Paragraph 7 of the Complaint.
8. Defendant denies the allegations set forth in Paragraph 8 of the Complaint.
9. Defendant denies the allegations set forth in Paragraph 9 of the Complaint.

10. Defendant denies the allegations set forth in Paragraph 10 of the Complaint.
11. Defendant denies the allegations set forth in Paragraph 11 of the Complaint.
12. Defendant denies the allegations set forth in Paragraph 12 of the Complaint.
13. Defendant denies the allegations set forth in Paragraph 13 of the Complaint.
14. Defendant denies the allegations set forth in Paragraph 14 of the Complaint.
15. Defendant denies the allegations set forth in Paragraph 15 of the Complaint.
16. Defendant denies the allegations set forth in Paragraph 16 of the Complaint.
17. Defendant denies the allegations set forth in Paragraph 17 of the Complaint.
18. Defendants admit that Plaintiff brings this action under the Fair Labor Standards Act and New York Labor Law but deny that they are liable to Plaintiff or any other individuals.
19. Defendant admits that Plaintiff seeks certification of this action as a collective action but deny that it's liable to Plaintiff or any other individuals.
20. Defendant states that Paragraph 20 of the Complaint contains conclusion of law that requires no response.
21. Defendant states that Paragraph 21 of the Complaint contains conclusion of law that requires no response.
22. Defendant lacks knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph 22 of the Complaint.
23. Defendant denies the allegations set forth in Paragraph 23 of the Complaint.
24. Defendant admits that Plaintiff seeks to bring this action as a representative of a prospective class, but deny that they are liable to Plaintiff or any other individuals.
25. Defendant admits the allegations set forth in Paragraph 25 of the Complaint.
26. Defendant admits the allegations set forth in Paragraph 26 of the Complaint.

27. Defendant denies the allegations set forth in Paragraph 27 of the Complaint.
28. Defendant denies the allegations set forth in Paragraph 28 of the Complaint.
29. Defendant admits the allegations set forth in Paragraph 29 of the Complaint.
30. Defendant denies the allegations set forth in Paragraph 30 of the Complaint.
31. Defendant denies the allegations set forth in Paragraph 31 of the Complaint.
32. Defendant denies the allegations set forth in Paragraph 32 of the Complaint.
33. Defendant denies the allegations set forth in Paragraph 33 of the Complaint.
34. Defendant denies the allegations set forth in Paragraph 34 of the Complaint.
35. Defendant denies the allegations set forth in Paragraph 35 of the Complaint except

to the extent that it contains conclusion of law.

36. Defendant denies the allegations set forth in Paragraph 36 of the Complaint.
37. Defendant denies the allegations set forth in Paragraph 37 of the Complaint.
38. Defendant denies the allegations set forth in Paragraph 38 of the Complaint.
39. Defendant denies the allegations set forth in Paragraph 39 of the Complaint.
40. Defendant admits that Plaintiff seeks to bring this action as a representative of a prospective class under 29 U.S.C 216(b), but deny that they are liable to Plaintiff or any other individuals.

41. Defendant denies the allegations set forth in Paragraph 41 of the Complaint.
42. Defendant denies the allegations set forth in Paragraph 42 of the Complaint.
43. Defendant denies the allegations set forth in Paragraph 43 of the Complaint.
44. Defendant denies the allegations set forth in Paragraph 44 of the Complaint.
45. Defendant admits the allegations set forth in Paragraph 45 of the Complaint.
46. Defendant denies the allegations set forth in Paragraph 46 of the Complaint.

47. Defendant denies the allegations set forth in Paragraph 47 of the Complaint.
48. Defendant denies the allegations set forth in Paragraph 48 of the Complaint.
49. Defendant denies the allegations set forth in Paragraph 49 of the Complaint.
50. Defendant denies the allegations set forth in Paragraph 50 of the Complaint.
51. Defendant denies the allegations set forth in Paragraph 51 of the Complaint.
52. Defendant denies the allegations set forth in Paragraph 52 of the Complaint.
53. Defendant denies the allegations set forth in Paragraph 53 of the Complaint.
54. Defendant denies the allegations set forth in Paragraph 54 of the Complaint.
55. Defendant denies the allegations set forth in Paragraph 55 of the Complaint.
56. Defendant denies the allegations set forth in Paragraph 56 of the Complaint.
57. Defendant denies the allegations set forth in Paragraph 57 of the Complaint.
58. Defendant denies the allegations set forth in Paragraph 58 of the Complaint.
59. Defendant denies the allegations set forth in Paragraph 59 of the Complaint.
60. Defendant denies the allegations set forth in Paragraph 60 of the Complaint.
61. Defendant denies the allegations set forth in Paragraph 61 of the Complaint.
62. Defendant denies the allegations set forth in Paragraph 62 of the Complaint.
63. Defendant denies the allegations set forth in Paragraph 63 of the Complaint.
64. Defendant denies the allegations set forth in Paragraph 64 of the Complaint.
65. Defendant denies the allegations set forth in Paragraph 65 of the Complaint.
66. Defendant denies the allegations set forth in Paragraph 66 of the Complaint.
67. Defendant denies the allegations set forth in Paragraph 67 of the Complaint.
68. Defendant denies the allegations set forth in Paragraph 68 of the Complaint.
69. Defendant denies the allegations set forth in Paragraph 69 of the Complaint.

70. Defendant denies the allegations set forth in Paragraph 70 of the Complaint.
71. Defendant denies the allegations set forth in Paragraph 71 of the Complaint.
72. Defendant denies the allegations set forth in Paragraph 72 of the Complaint except to the extent that it contains conclusion of law.
73. Defendant denies the allegations set forth in Paragraph 73 of the Complaint except to the extent that it contains conclusion of law.
74. Defendant denies the allegations set forth in Paragraph 74 of the Complaint.
75. Defendant denies the allegations set forth in Paragraph 75 of the Complaint.
76. Defendant denies the allegations set forth in Paragraph 76 of the Complaint.
77. Defendant denies the allegations set forth in Paragraph 77 of the Complaint.
78. Defendant denies the allegations set forth in Paragraph 78 of the Complaint.
79. Defendant denies the allegations set forth in Paragraph 79 of the Complaint.
80. Defendant states that Paragraph 80 of the Complaint contains conclusion of law that requires no response.

81. Defendant denies the allegations set forth in Paragraph 81 of the Complaint.
82. Defendant denies the allegations set forth in Paragraph 82 of the Complaint.
83. Defendant denies the allegations set forth in Paragraph 83 of the Complaint.
84. Defendant denies the allegations set forth in Paragraph 84 of the Complaint.
85. Defendant denies the allegations set forth in Paragraph 85 of the Complaint.
86. Defendant denies the allegations set forth in Paragraph 86 of the Complaint.
87. Defendant denies the allegations set forth in Paragraph 87 of the Complaint.
88. Defendant denies the allegations set forth in Paragraph 88 of the Complaint.
89. Defendant denies the allegations set forth in Paragraph 89 of the Complaint.

90. Defendant admits that Plaintiff seeks to bring this action as a representative of a prospective class under 29 U.S.C 216(b), but deny that they are liable to Plaintiff or any other individuals.

91. Defendant denies the allegations set forth in Paragraph 91 of the Complaint.

92. Defendant denies the allegations set forth in Paragraph 92 of the Complaint.

FIRST CAUSE OF ACTION

VIOLATION OF THE FLSA MINIMUM WAGE PROVISIONS

93. Defendant realleges and incorporates by reference all preceding paragraphs as if they were set forth again herein.

94. Defendant denies the allegations set forth in Paragraph 94 of the Complaint.

95. Defendant admits the allegations set forth in Paragraph 95 of the Complaint.

96. Defendant denies the allegations set forth in Paragraph 96 of the Complaint.

97. Defendant denies the allegations set forth in Paragraph 97 of the Complaint.

98. Defendant denies the allegations set forth in Paragraph 98 of the Complaint.

99. Defendant denies the allegations set forth in Paragraph 99 of the Complaint.

SECOND CAUSE OF ACTION

VIOLATION OF THE FLSA OVERTIME PROVISIONS

100. Defendant realleges and incorporates by reference all preceding paragraphs as if they were set forth again herein.

101. Defendant denies the allegations set forth in Paragraph 101 of the Complaint.

102. Defendant admit the allegations set forth in Paragraph 102 of the Complaint.

103. Defendant denies the allegations set forth in Paragraph 103 of the Complaint.

THIRD CAUSE OF ACTION

VIOLATION OF THE NEW YORK MINIMUM WAGE RATE

104. Defendant realleges and incorporates by reference all preceding paragraphs as if they were set forth again herein.

105. Defendant denies the allegations set forth in Paragraph 105 of the Complaint.

106. Defendant denies the allegations set forth in Paragraph 106 of the Complaint.

107. Defendant denies the allegations set forth in Paragraph 107 of the Complaint.

108. Defendant denies the allegations set forth in Paragraph 108 of the Complaint.

FOURTH CAUSE OF ACTION

VIOLATION OF THE NEW YORK STATE

LABOR LAW'S OVERTIME PROVISIONS

109. Defendant realleges and incorporates by reference all preceding paragraphs as if they were set forth again herein.

110. Defendant denies the allegations set forth in Paragraph 110 of the Complaint.

111. Defendant denies the allegations set forth in Paragraph 111 of the Complaint.

112. Defendant denies the allegations set forth in Paragraph 112 of the Complaint.

FIFTH CAUSE OF ACTION

(VIOLATION OF THE SPREAD OF HOURS WAGE ORDER

OF THE NEW YORK COMMISSIONER OF LABOR)

113. Defendant realleges and incorporates by reference all preceding paragraphs as if they were set forth again herein.

114. Defendant denies the allegations set forth in Paragraph 114 of the Complaint.

115. Defendant denies the allegations set forth in Paragraph 115 of the Complaint.

116. Defendant denies the allegations set forth in Paragraph 116 of the Complaint.

SIXTH CAUSE OF ACTION

VIOLATION OF THE NOTICE AND RECORDKEEPING

REQUIREMENTS OF THE NEW YORK LABOR LAW

117. Defendant realleges and incorporates by reference all preceding paragraphs as if they were set forth again herein.

118. Defendant denies the allegations set forth in Paragraph 118 of the Complaint.

119. Defendant denies the allegations set forth in Paragraph 119 of the Complaint.

SEVENTH CAUSE OF ACTION

VIOLATION OF THE WAGE STATEMENT PROVISIONS

OF THE NEW YORK LABOR LAW

120. Defendant realleges and incorporates by reference all preceding paragraphs as if they were set forth again herein.

121. Defendant denies the allegations set forth in Paragraph 121 of the Complaint.

122. Defendant denies the allegations set forth in Paragraph 122 of the Complaint.

EIGHTH CAUSE OF ACTION

(RECOVERY OF EQUIPMENT COSTS)

123. Defendant realleges and incorporates by reference all preceding paragraphs as if they were set forth again herein.

124. Defendant denies the allegations set forth in Paragraph 124 of the Complaint.

125. Defendant denies the allegations set forth in Paragraph 125 of the Complaint.

NINTH CAUSE OF ACTION

**UNLAWFUL DEDUCTIONS FROM TIPS IN VIOLATION
OF THE NEW YORK LABOR LAW**

126. Defendant realleges and incorporates by reference all preceding paragraphs as if they were set forth again herein.

127. Defendant denies the allegations set forth in Paragraph 127 of the Complaint.
128. Defendant denies the allegations set forth in Paragraph 128 of the Complaint.
129. Defendant denies the allegations set forth in Paragraph 129 of the Complaint.
130. Defendant denies the allegations set forth in Paragraph 130 of the Complaint.
131. Defendant denies the allegations set forth in Paragraph 131 of the Complaint.

TENTH CAUSE OF ACTION

**VIOLATION OF THE TIMELY PAYMENT PROVISIONS
OF THE NEW YORK LABOR LAW**

132. Defendant realleges and incorporates by reference all preceding paragraphs as if they were set forth again herein.

133. Defendant denies the allegations set forth in Paragraph 133 of the Complaint.
134. Defendant denies the allegations set forth in Paragraph 134 of the Complaint.

Defendants admit only that Plaintiff purports to seek judgment against Defendant for the relief referenced in the “WHEREFORE” Paragraph of the Complaint. Except as admitted herein, Defendant denies the allegations in this “WHEREFORE” Paragraph of the Complaint.

AFFIRMATIVE AND OTHER DEFENSES

FIRST DEFENSE

The Complaint is barred in whole or in part as some or all of the allegations fail to state a claim upon which relief can be granted.

SECOND DEFENSE

Defendant, at all times, paid and provided working conditions to Plaintiff in accordance with all applicable state, federal, and local laws.

THIRD DEFENSE

Defendant have acted in good faith and have not violated any rights that may be secured to Plaintiff under any federal, state, or local laws, rules, regulations and guidelines.

FOURTH DEFENSE

The Complaint fails to state a claim for punitive damages.

FIFTH DEFENSE

The Complaint fails to state a claim for compensatory damages.

SIXTH DEFENSE

Plaintiff has failed to mitigate or otherwise act to avoid, lessen or reduce any of the damages, injury or harm of which they now complain.

SEVENTH DEFENSE

The Complaint is barred, in whole or in part, because Plaintiff was paid all sums which may have been due to him under the applicable laws and their corresponding regulations.

EIGHTH DEFENSE

Plaintiff was barred from recovering based on equitable doctrines, including, without limitation, laches, unclean hands, waiver, and/or estoppel, and prior administrative proceedings.

NINTH DEFENSE

Any recovery should be offset by the amounts of tax credits and/or deductions available to the Plaintiff based on any of the transaction at issue.

TENTH DEFENSE

The claims for pre-judgment interest under the New York Labor Law are preempted by the remedies provided by the Fair Labor Standards Act.

ELEVENTH DEFENSE

The Court shall not employ supplement jurisdiction over Plaintiff's New York Labor Law claims when Plaintiff fails to state a claim under Federal Labor Standards Act.

TWELVETH DEFENSE

Defendants do not meet the \$500,000 threshold required for enterprise coverage under the Federal Labor Standards Act.

RESERVATION OF RIGHTS

Defendant reserves the right to raise additional affirmative and other defenses that may subsequently become or appear applicable to Plaintiff's claims.

WHEREFORE, Defendant respectfully request judgment dismissing the Complaint with prejudice and awarding it costs, reasonable attorneys' fees, and such other relief as this Court deems just and proper.

JURY TRIAL DEMAND

Defendant requests a jury trial on all issues so triable in this counterclaim.

Dated: July 30, 2018

HANG & ASSOCIATES, PLLC.

/s/Lorena P. Duarte
Lorena P. Duarte, Esq.
136-20 38th Ave., Suite 10G
Flushing, New York 11354
Tel: (718) 353-8588
Dir: (718) 353-8522
lduarte@hanglaw.com
Attorney for Defendant

TO: Michael Faillace & Associates, P.C.
Michael Faillace, Esq.
Sara Isaacson, Esq.
60 East 42nd Street Suite 4510
New York, NY 10165
Tel: (212) 317-1200
mfaillace@faillacelaw.com
sisaacson@faillacelaw.com
Attorney for Plaintiff

CERTIFICATE OF SERVICE

The undersigned, an attorney duly licensed to practice before this Court, certifies that by filing the Defendant's Answer and Affirmative Defenses through this Court's electronic filing system, she caused the documents to be served upon the following:

Micahel A. Faillace, Esq.
Sara Isaacson, Esq.
Michael Faillace & Associates, P.C.
One Grand Central Place
60 East 42nd Street, Suite 4510
New York, NY 10165
(t) 212-317-1200
(f) 212-317-1620
mfaillace@faillacelaw.com
Attorney for Plaintiff

I certify under penalty of perjury that the foregoing is true and correct.

Dated: July 30, 2018

HANG & ASSOCIATES, PLLC

By: /s/Lorena P. Duarte
Lorena P. Duarte, Esq.
136-20 38th Ave., Suite 10G
Flushing, New York 11354
Tel: (718) 353-8588
Dir: (718) 353-8522
Attorneys for Defendant